## REMARKS

The specification has been amended to add priority information. The specification has also been amended to correct certain editorial errors. In particular, the term "poultry manure" on page 6 has been replaced with the term "swine manure." Support for the amendment can be found in the Title; page 3, lines 23 and 33; page 4, line 14; and claims 1, 3, 16 and 17 as originally filed. In addition, the specification on page 13 has been amended to identify the table number that lists the species and accession numbers of various preferred yeast strains and the functions of the respective strains.

Claims 1-28 were pending in this application. Applicant has cancelled claims 1-28 without prejudice and added new claims 29-49 to more clearly describe certain embodiments of the present invention. Applicant fully reserves the right to prosecute the cancelled subject matter in one or more related applications.

Upon entry of the amendments, claims 29-49 will be pending in the present application. Specifically, new claims 29 and 30 are directed to methods for preparing a biological fertilizer composition by mixing or culturing at least two yeast cell components, and adding swine manure to the yeast cells.

New claims 29 and 30 correspond to cancelled claims 16 and 18. Support for new claims 29 and 30 can be found in the specification at, *inter alia*, page 3, line 32 to page 4, line 6; page 4, lines 9-13; page 9, line 16 to page 10, line 8; page 14, lines 24-33; and page 18, line 9 to page 54, line 19.

New dependent claims 31 and 32 are directed to the methods of new claims 29 and 30, respectively, and further requires the mixing or culturing of additional yeast cell components. New claims 31 and 32 correspond to cancelled claims 17 and 19.

New dependent claims 33 and 36 relate to the addition of starch to the mixed or cultured yeast cells. Support for new claims 33 and 36 can be found in the specification at, *inter alia*, page 18, lines 27-29; page 22, lines 10-12; page 25, lines 17-19; page 28, lines 22-24; page 34, lines 32-34; page 37, lines 27-29; page 40, lines 28-30; page 45, lines 18-20; page 50, lines 25-27; and cancelled claims 20 and 21.

New dependent claims 34 and 37 relate to the addition of an inorganic substrate component to the mixed or cultured yeast cells, and new dependent claims 35 and 38 provides a list of inorganic substrate component that can be used to prepare the biological fertilizer compositions. Support for new claims 34, 35, 37 and 38 can be found in the specification at, *inter alia*, page 3, line 23; page 7, lines 4-8; page 14, line 34 to page 15, line 2; and cancelled claims 20 and 21.

New dependent claim 39 recites additional steps of processing the biological fertilizer compositions that are formed by the methods of new claims 29-32. New claim 39 corresponds to cancelled claims 22 and 23.

New dependent claims 40-45 recite the types of yeast cells that can be used in the methods of new claims 29-32. Support for new claims 40-45 can be found in the specification at, *inter alia*, page 4, lines 7-9; and page 10, line 9 to page 13, line 31.

New dependent claims 46 and 47 are directed to methods that require the mixing or culturing of at least six yeast cell components, and new dependent claims 48 and 49 are directed to methods that require the mixing or culturing of at least nine yeast cell components. Support for new claims 46-49 can be found in the specification at, *inter alia*, page 3, lines 21-23; page 3, line 32 to page 4, line 6; page 4, lines 12-13; page 6, lines 32-35; and page 15, lines 8-13. No new matter has been added.

## THE RESTRICTION REQUIREMENT

The Examiner has required restriction under 35 U.S.C. § 121 to one of the following inventions:

I. Claims 1-2, 5-11 and 13-15, drawn to a biological fertilizer composition comprising swine manure and dried yeast cells that can fix nitrogen, decompose phosphorus, potassium, and antibiotics; can suppress growth of pathogens, overproduce ATP and growth factors, and reduce odor, classified in class 435, subclass 171.

II. Claims 3-10 and 12-15, drawn to a second biological fertilizer composition comprising a plurality of dried yeast cells grown in electromagnetic fields of varying frequency and strength, classified in class 435, subclass 173.1.

III. Claims 16-17, 20 and 22, drawn to a method to prepare a biological fertilizer composition wherein first a mixture of yeast cells of varying physiological capabilities is cultured, and subsequently swine manure is added to the said cultured yeast cell mixture, classified in class 435, subclass 254.2.

IV. Claims 18-19, 21, 23 and 25-28, drawn to a second method to prepare a biological fertilizer composition by first preparing a mixture of yeast cells of different physiological capabilities by culturing said yeasts in electromagnetic fields of varying frequency and strength, and subsequently adding swine manure to the said cultured yeast cell mixture, classified in class 435, subclass 173.1.

V. Claim 24, drawn to a method to enhance plant growth wherein a biological fertilizer is prepared by mixing a mixture of yeast cells of different physiological capabilities with swine manure is applied, classified in class 504, subclass 173.1.

The Examiner contends that the inventions of Groups I-V are distinct, each from the other. In response, Applicant provisionally elects with traversal to prosecute the invention of Group III, *i.e.*, claims 16-17, 20 and 22.

The Examiner further indicates that if any one of Groups I-V is elected, Applicant is required to elect a single species in each one of the following categories:

A. one of the components claimed in claim 1(II)(a) through 1(II)(c) and one of the components claimed in claim 1(III)(d) through 1(III)(f);

B. one of the components claimed in claim 2(g) through 2(i);

C. one of the components claimed in claim 3(II)(a) through 3(III)(f);

D. one of the components claimed in claim 4(g) through 4(i);

E. one of the components claimed in claim 6;

F. one of the components claimed in claim 7; and

G. one of the components claimed in claims 13 and 14.

As a preliminary matter, Applicant respectfully submits that claim 3 recites biological fertilizer compositions that comprise at least two yeast cell components. As such, the species election in C would read similar to the species election in A and require Applicant to elect one of components claimed in 3(II)(a) through 3(II)(c) and one of components claimed in claim 3(III)(d) through 3(III)(f).

In response to the species election, Applicant hereby provisionally elects with traversal the following species:

A. the component claimed in claim 1(II)(a) and the component claimed in claim 1(III)(d);

B. the component claimed in claim 2(g);

C. the component claimed in claim 3(II)(a) and the component claimed in claim 3(III)(d);

D. the component claimed in claim 4(g);

E. the component *Saccharomyces cerevisiae* claimed in claim 6;

F. the component *Saccharomyces cerevisiae* AS2.628 claimed in claim 7; and

G. the component *Saccharomyces cerevisiae* AS2.628 claimed in claims 13 and 14.

Newly added claims 29-49 are readable on the elected species.

Applicant fully reserves the rights to prosecute the non-elected subject matter in one or more related applications.

Applicant submits that currently pending claims 1-28 have been cancelled and new claims 29-49 have been added to more clearly describe certain embodiments of the present invention. Applicant further submits that newly added claims 29-49 are directed to the inventions of Groups III and IV and do not read on the inventions of Groups I, II and V. Accordingly, the restriction requirement over Groups I, II and V is moot and should be withdrawn.

Applicant submits that the new claims that are based on the invention of Group III (*e.g.*, new claims 29 and 30) are directed to methods for preparing biological fertilizer compositions using swine manure and at least two yeast cell components, and the new claims that are based on the invention of Group IV (*e.g.*, new dependent claims 31 and 32) are directed to methods for preparing biological fertilizer compositions using swine manure, the same two yeast cells components that are used in new claims 29 and 30 (Group III), plus at least a third yeast cell component (Group IV). For the Examiner to search the methods of new dependent claims 31 and 32 (Group IV), he would necessarily search the methods of new claims 29 and 30 (Group III). Even assuming *arguendo* that Groups III and IV represented distinct or independent inventions, Applicant submits that to search the subject matter of these groups together would not be a serious burden on the Examiner, especially when both Groups III and IV are classified in the same class 435.

The M.P.E.P. § 803 (Eighth Edition, August 2001) states:

> If the search and examination of an entire application can be made without serious burden, the examiner 'must' examine it on the merits, even though it includes claims to distinct or independent inventions.

Thus, in view of this provision, even if for arguments sake, the subject matter of Groups III and IV are distinct inventions, the subject matter of these groups would necessarily be searched and examined in the search of the subject matter of the elected Group III and therefore, the search of both Groups III and IV would not be a "serious burden" on the Examiner.

Accordingly, Applicant respectfully requests that the restriction requirement be modified such that Groups III and IV are combined and examined together, and that the subject matters of new claims 29-49 are examined within a single group.

Applicant reserves the right to petition from the restriction requirement under 37 C.F.R. § 1.144.

## CONCLUSION

Applicant respectfully requests that the above remarks be entered and made of record in the file history of the instant application.

Respectfully submitted,

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Enclosures